UNITED NATIONS

General Assembly

FIFTY-FIRST SESSION

Official Records

SIXTH COMMITTEE
62nd meeting
held on
Friday, 4 April 1997
at 3 p.m.
New York

SUMMARY RECORD OF THE SECOND PART* OF THE 62nd MEETING

Chairman: Mr. YAMADA (Japan)
(Chairman of the Working Group of the Whole on the Elaboration of a Framework Convention on the Law of the Non-Navigational Uses of International Watercourses)

CONTENTS

AGENDA ITEM 144: CONVENTION ON THE LAW OF THE NON-NAVIGATIONAL USES OF INTERNATIONAL WATERCOURSES (continued)

* The summary record of the first part of the meeting appears as document A/C.6/51/SR.62.

This record is subject to correction. Corrections should be sent under the signature of a member of the delegation concerned *within one week of the date of the publication* to the Chief of the Official Records Editing Section, room DC2-750, 2 United Nations Plaza, and incorporated in a copy of the record.

Corrections will be issued after the end of the session, in a separate corrigendum for each Committee.

Distr. GENERAL
A/C.6/51/SR.62/Add.1
29 August 1997
ENGLISH
ORIGINAL: SPANISH

97-81090 (E)

The meeting was resumed at 6.15 p.m.

AGENDA ITEM 144: CONVENTION ON THE LAW OF THE NON-NAVIGATIONAL USES OF INTERNATIONAL WATERCOURSES (continued)

1. The CHAIRMAN said that, although the representative of France had cited rule 120 of the rules of procedure of the General Assembly, which provided that, as a general rule, no proposal should be put to the vote at any meeting of a committee unless copies of it had been circulated not later than the day preceding the meeting, that requirement was usually waived when negotiations were prolonged and there was a deadline for the conclusion of the discussion. After noting that each of the articles had been adopted separately, on the understanding that the document had been read in its entirety, he said that a vote would be taken on the draft convention as a whole and that a recorded vote had been requested.

2. A recorded vote was taken on the draft convention as a whole.

In favour: Algeria, Austria, Bangladesh, Belgium, Brazil, Cambodia, Canada, Chile, Czech Republic, Denmark, Ethiopia, Finland, Germany, Greece, Holy See, Hungary, Iran (Islamic Republic of), Italy, Jordan, Liechtenstein, Malawi, Malaysia, Mexico, Mozambique, Namibia, Netherlands, Nigeria, Norway, Portugal, Romania, South Africa, Sudan, Switzerland, Syrian Arab Republic, Thailand, the former Yugoslav Republic of Macedonia, Tunisia, United Kingdom of Great Britain and Northern Ireland, United States of America, Venezuela, Viet Nam, Zimbabwe

Against: China, France, Turkey

Abstaining: Argentina, Bolivia, Bulgaria, Colombia, Ecuador, Egypt, India, Israel, Japan, Lebanon, Lesotho, Mali, Pakistan, Russian Federation, Rwanda, Slovakia, Spain, United Republic of Tanzania, Uruguay

3. The draft convention as a whole was adopted by 42 votes to 3, with 19 abstentions.

4. Mr. RAO (India), speaking in explanation of vote, said that his delegation had done its best to promote the adoption of a convention by consensus and without a vote. As that had not been possible, India unfortunately had had to abstain.

5. From the outset, the Governments had been considering the draft convention within the framework and parameters which the International Law Commission had recommended for its adoption. The Commission had taken years to prepare the draft, and no delegation had had the opportunity to conduct the necessary in-depth study of the various issues raised. Articles 5, 6 and 7 should have been retained as proposed by the Commission, since it had been impossible to improve on the care with which they had been drafted and the balance achieved in their provisions. In particular, article 5, which was the only one that clearly

established the principles of equitable and reasonable utilization, had been weakened and obscured by the introduction of undefinable concepts that were not even relevant to its implementation.

6. Article 7 had also lost the balance achieved in the Commission's proposal and was therefore unsatisfactory. India did not oppose the idea of paying due attention to environmental considerations in the management and use of river resources; however, like other environmental issues, they could not be separated from other development considerations, the need for transfers of technical resources and the need for capacity-building in all States, particularly developing ones. Sustainable development, protection, preservation and management were basically guiding principles and could not be considered specific and enforceable international standards.

7. India felt that article 32 on non-discrimination was inappropriate in a framework convention, since the application of that principle depended on the economic, political and legal integration of the States of each region. In any event, agreements concluded between States would always take precedence. Likewise, problems concerning private international law had no place in the Convention.

8. Lastly, the Indian delegation was fundamentally opposed to the inclusion of any provision on dispute settlement in the framework Convention, since the parties to a dispute should be free to choose the means of settling it. A convention of that type should set forth the basic standards and general principles for the negotiation of agreements between neighbouring States, without going into details which would only hamper such negotiations. The opportunity to adopt an instrument of high persuasive value had been lost.

9. Mr. AMER (Egypt) said that, although his delegation had taken part in the debates of the Sixth Committee with the greatest possible interest and effectiveness, it had abstained from voting. It believed, first of all, that the Convention codified only some of the customary rules of international law and that some of its provisions constituted new rules which departed from established customary law. In that regard, the new provisions which departed from international standards and with respect to which his delegation had reservations could not be used against the Arab Republic of Egypt in the future, even if other States adopted them. The framework Convention could not affect the legal validity of customs which had always existed and would always exist and which reflected established international standards. Likewise, it could not adversely affect bilateral, multilateral or international agreements on rivers or watercourses because such agreements reflected the general provisions of international contracts and because that would cause incalculable harm in many parts of the world. In Egypt's view, the expression "international watercourses" neither contravened nor formed part of the concept of an "international drainage basin"; consequently, the use of that new term could not in any way affect the rights or obligations deriving from other bilateral, regional or international agreements or from customs established in the relations between riparian States.

10. Given the importance it attached to the equitable sharing of international watercourses, Egypt had reservations about the establishment of a rigid formula

in article 5 linking that principle to the obligation of riparian States not to cause harm to other States or making the two principles equivalent. The standards of equitable utilization that appeared in article 6 could not cancel or replace other standards established under international customary law. With respect to the wording of article 7, he felt that it added nothing to the customary principles already established and set forth by the Commission since the beginning of its work. The principle of the right to use international watercourses without harming other States was the cornerstone of any legal regime on international watercourses agreed upon between States.

11. Lastly, he stressed that the document was a framework convention, meaning that it contained a set of principles and general rules on the non-navigational uses of international watercourses, but that those principles and rules and their partial or full application to any given international river basin would depend on the mutual consent of all the States that shared that watercourse. Therefore, the Convention could not be applied directly to the resources of river basins unless the riparian States had concluded a special agreement governing their use. Special agreements would take into account the particular nature of the river in question and other bilateral or multilateral conventions, as well as the customs established with respect to the use of its waters, and their provisions would take precedence over the Convention.

12. Since the dawn of its civilization, Egypt had used the Nile and had cooperated with other basin States under international customary rules. It hoped that the Convention just adopted would promote constructive cooperation and help to guarantee the use of the Nile as a source of life for all the peoples of the region.

13. Mr. HARRIS (United States of America) said that the Convention was the outcome of a lengthy process, particularly in the International Law Commission, and that although it was not perfect, it had established a framework that could foster a common understanding among the majority of countries. Not all of its provisions were part of international customary law, but even the new ones served a vital function by forming a set of reasonable standards for the parties to the Convention which would help to settle disputes and to improve communication and cooperation between watercourse States.

14. Mr. SABEL (Israel), speaking in explanation of vote, said that although the Convention represented an effort to strike a balance among different interests, his country still had reservations about various aspects, and had therefore abstained from voting on the draft convention as a whole.

15. Mr. CHIMIMBA (Malawi) said that, while his delegation had voted in favour of the draft Convention as a whole, he wished to place on record its reservations concerning article 2 (c); article 3, paragraph 4; article 32; and article 33.

16. Mr. CAFLISCH (Observer for Switzerland), speaking in explanation of vote, said that his delegation had voted in favour of the Convention as a whole in the belief that it could be a useful instrument for the international community and that it represented the codification of a fundamental principle of the law on the uses of international watercourses, namely, equitable and reasonable

utilization. Nonetheless, his delegation was concerned, first of all, at the lack of a preambular paragraph recalling the sovereignty of watercourse States over the part of the watercourse situated in their territory, even though the exercise of such sovereignty was subject to the norms of international law. Second, paragraphs 2 and 5 and the ambiguity of article 3, paragraph 4, gave cause for concern. Third, it was concerned at the wording of article 7, paragraph 2 for the reasons it had outlined previously. Lastly, it was not opposed to article 33, which was preferable to having no means of settling disputes, even though it believed that the Convention, in particular, should include the option of seeking binding court decisions as a last resort.

17. Ms. GAO Yanping (China), speaking in explanation of vote, said that her delegation had voted against the Convention for reasons that fell into two categories. First, it had voted against it for procedural reasons: her delegation had not had a 24-hour period to inform its Government of the outcome of the negotiations on the draft Convention and to request instructions; nor had it received the official translation of the instrument. While articles 3, 5, 6, 7 and 33 had been adopted by a vote, many other articles that had been adopted without a vote had given rise to reservations by numerous States. Clearly, the Convention had not been adopted by consensus of the international community, contrary to United Nations practice, which would hinder its implementation. Second, her delegation had opposed the Convention for reasons of content. In its view, there was no balance between the rights and obligations of watercourse States. Nor did the Convention reflect the principle of national sovereignty, recognized by both the Charter of the United Nations and international law. Moreover, its provisions on the settlement of disputes did not conform to the provisions of Chapter VI of the Charter. Lastly, her delegation continued to have reservations with regard to the first and fifth preambular paragraphs and articles 5, 7, 20, 22, 33 and 36.

18. Ms. VARGAS DE LOSADA (Colombia), speaking in explanation of vote, said that her delegation had abstained because the basic provisions of the Convention were not sufficiently balanced; such an agreement, particularly its basic provisions, should have enjoyed wider acceptance. Moreover, she wished to place on record that, owing to the circumstances surrounding the negotiations on the text of the Convention, there had been no time to compare the versions in the various official languages, which would all be equally authentic.

19. Mr. PASTOR RIDRUEJO (Spain), speaking in explanation of vote, said that his delegation had abstained because the content of article 7, paragraph 2, of the Convention was highly unsatisfactory. In his view, the provision, which was the backbone of the Convention, was not sufficiently balanced.

20. Mr. GONZALEZ (France), speaking in explanation of vote, said that his delegation had voted against the Convention because the point of order it had raised had been ignored; speakers had been denied the opportunity to explain their vote before the voting; and the Convention had been adopted without the two-thirds majority specified in the rules of procedure. His delegation had also voted against it because of the manner in which the work had been carried out, the procedure used to negotiate the adoption of the draft Convention and the ambiguities of some of its basic provisions, particularly those relating to the scope of the draft. There were also a number of articles which had given

rise to numerous reservations, indicating that the Sixth Committee could not consider that it had completed its work; therefore, it could not submit a report on the question to the General Assembly. Lastly, he noted that the number of votes in favour of adopting the draft Convention was barely over the minimum of 35 States required for its entry into force; that would impede its general acceptance and its contribution to the development of international law and to the strengthening of international peace and security.

21. Mr. NUSSBAUM (Canada), speaking in explanation of vote, said that his delegation had voted in favour of adopting the draft Convention for a number of reasons. First, according to its interpretation, article 3, paragraph 1, of the Convention provided that agreements already in force could not be affected by the implementation of the Convention. Second, according to its interpretation, article 3, paragraph 2, implied no legal or other obligation whatsoever for the parties to harmonize agreements already concluded and in force with the principles of the Convention. Lastly, it supported the codification of international law in general and believed that it would help to strengthen peace and security at a time when many international watercourses and many sources of drinking water in general were being increasingly threatened by greater consumption and pollution.

22. Mr. SVIRIDOV (Russian Federation), speaking in explanation of vote, said that his delegation had abstained because it deemed article 32 of the Convention unacceptable.

23. Mr. ŠMEJKAL (Czech Republic), speaking in explanation of vote, said that his delegation had voted in favour of adopting the draft Convention because it was interested in promoting the process of codification and progressive development of international law. Nonetheless, it had reservations concerning a number of provisions of the Convention. First, it was difficult to accept the text of article 7, paragraph 2. Second, the fifth preambular paragraph and article 5 referred to "optimal [and sustainable] utilization"; in his delegation's view, the adjective "sustainable" was inappropriate. Equally unsatisfactory was the fact that the preamble lacked a paragraph recognizing the sovereignty of watercourse States over the watercourse in question. Lastly, it was regrettable that the approach taken in article 3 in order to resolve the problem of relations between the Convention and watercourse agreements concluded prior or subsequent to it was lacking in clarity and unnecessarily complicated.

24. Mr. SALINAS (Chile), speaking in explanation of vote, said that his delegation had voted in favour of the draft Convention, despite its reservations with regard to some of its provisions. For example, the deletion of the reference to the sovereignty of the watercourse States over the part of the watercourse situated in their national territory was a serious omission, since the principle of State sovereignty was the point of departure for the whole process. Nonetheless, the draft which had been adopted was a useful guideline for States insofar as it laid down, in a balanced fashion, the basic principles governing the question, namely, the principle of equitable and reasonable utilization and participation, the principle of not causing significant harm, the principle of cooperation and the principle of environmental protection. The Convention was also a useful instrument because it established a binding

procedure for the settlement of disputes, particularly through the mechanism of fact-finding.

25. Mr. KASME (Syrian Arab Republic) said that his delegation had voted in favour of the draft convention because it considered it an important step forward. However, he had reservations on three of the articles. With regard to article 5, he endorsed the clarification which the International Law Commission had made in paragraph (3) of the commentary on article 5 in its report on the work of its forty-sixth session (A/49/10): "Attaining optimal utilization and benefits does not mean achieving the 'maximum' use, the most technologically efficient use, or the most monetarily valuable use much less short-term gain at the cost of long-term loss. Nor does it imply that the State capable of making the most efficient use of a watercourse - whether economically, in terms of avoiding waste, or in any other sense - should have a superior claim to the use thereof. Rather, it implies attaining maximum possible benefits for all watercourse States and achieving the greatest possible satisfaction of all their needs, while minimizing the detriment to, or unmet needs of, each." With regard to article 7, he endorsed the observations of the Commission in paragraph (14) of the relevant commentary: "A use which causes significant harm to human health and safety is understood to be inherently inequitable and unreasonable." Finally, with regard to article 33, his delegation was certain that the establishment of a compulsory procedure for the settlement of disputes regarding the application and interpretation of the Convention was the best way to make that instrument effective and prevent deadlocks.

26. Mr. BENÍTEZ SÁENZ (Uruguay) said that his delegation had abstained in the vote because, although it supported the principles contained in the Convention as adopted, it believed that the figure of 35 States established in article 36 for its entry into force was not sufficiently representative for such a framework convention.

27. Mr. LOAYZA (Bolivia) said that his delegation had abstained because of its previously stated reservations concerning the Convention as adopted, in particular concerning article 7, paragraph 2.

28. Mr. BOCALANDRO (Argentina) said he did not wish to restate the reservations which his delegation had already expressed concerning certain articles of the Convention, which could be found in the summary records. His delegation had abstained because the Convention as adopted presented some problems with regard to key elements which had not been resolved satisfactorily.

29. Mr. CANELAS DE CASTRO (Portugal) said that his delegation had voted in favour of the Convention because it represented a milestone in the process of the codification and progressive development of international law relating to the uses of international watercourses and to the uses of water in general, as well as to cooperation in that field, bearing in mind in particular the limitations, both quantitative and qualitative, to which waters and their ecosystems were subject. The instrument just adopted should be applied without prejudice to the principles, norms and general concepts of applicable international environmental law.

30. Mr. DEKKER (Netherlands) said that his country maintained watercourse cooperation agreements with the riparian States of the rivers Scheldt, Moselle and Rhine - Germany, Belgium, France, Luxembourg and Switzerland. Those agreements dealt with flood prevention, pollution control and restoration of aquatic ecosystems. His delegation had voted in favour of the Convention because it hoped that, notwithstanding the reservations expressed by France and Switzerland, which, like the Netherlands, were parties to the aforementioned agreements, existing watercourse agreements would be respected under the provisions of article 3.

31. Mr. AL-WITRI (Iraq), said that his delegation had voted in favour of the Convention because it allowed the codification of international law on the uses of international watercourses. Riparian States of such watercourses should cooperate constructively to meet the needs of all in accordance with existing agreements, the Convention and international law, whether or not they were parties to the Convention. The modification made to the definition of the term "watercourse State" by the International Law Commission in article 2, subparagraph (c), was unnecessary. A provision should have been added to article 33 concerning arbitration and binding legal solutions to disputes between watercourse States which could not be resolved by other means. Finally, his delegation feared that the number of 35 States established for the entry into force of the Convention would be insufficient to guarantee its application.

32. Mr. AMARE (Ethiopia) said that although his delegation had made some reservations, it had voted in favour of the adoption of the draft convention as a whole, since it contained the basic norms for regulating the use of international watercourses on the basis of the principle of equitable use, which was fully recognized in articles 5, 6 and 7. It was to be hoped, however, that the ambiguous doctrines some States had cited regarding the use of watercourses would not be taken into account. The Convention would be highly useful in cases where no agreement had been made to regulate the joint use of an international watercourse. No State could claim an exclusive right on the basis of outmoded principles established unilaterally for its own benefit. The Convention would provide an appropriate framework within which watercourse States could negotiate in good faith an equitable allocation of water resources.

33. Mr. HABIYAREMYE (Rwanda) said that his delegation had abstained in the vote because the preamble to the Convention contained no reference to State sovereignty.

34. Mr. LAVALLE (Guatemala) said it was regrettable that it had not been possible to include in the preamble the proposed paragraph on State sovereignty and that the version of article 7 contained in the report of the International Law Commission, which established an adequate balance between upstream and downstream watercourse States, had not been adopted. It was also regrettable that it had not been possible to compare the different language versions, particularly as oral amendments had been made only to the English version of article 7.

35. Mr. NGUYEN QUY BINH (Viet Nam) said that his delegation had voted in favour of the adoption of the draft convention because it believed in the codification of international law. However, it had made a reservation because the principle

of State sovereignty was not fully reflected in the Convention. In any event, the principle of State sovereignty did not absolve States of their liability for transboundary harm. In addition, the text adopted, although it constituted a framework convention, did provide for a minimum dispute-settlement mechanism. Therefore, his delegation had voted in favour of its adoption.

36. Ms. FLORES (Mexico) said that although it had, unfortunately, not been possible to adopt the Convention without a vote, the text represented a significant step forward in the codification and progressive development of international law and would help to improve cooperation and communication between States and promote the conservation and preservation of international watercourses to the benefit of current and future generations.

37. Mr. PRANDLER (Hungary) said that his delegation had voted in favour of the draft convention even though it had placed on record reservations concerning articles 5, 6, 7 and 33. The text as prepared truly represented a compromise, and thus it was regrettable that some countries had voted against its adoption or had abstained. The Convention would contribute to the progressive development and codification of international law, as the International Law Commission had anticipated.

38. Mr. VARSO (Slovakia) said that his delegation had abstained in the vote on the draft convention because it believed that there was a lack of balance between articles 5 and 7. Article 5 should allow the equitable and reasonable use of international watercourses, while article 7 should place limits on such utilization. Its abstention did not mean that Slovakia was against the codification and progressive development of international law. Cooperation among States was essential in order to strike a balance between the interests of upstream and downstream watercourse States.

39. Mr. PULVENIS (Venezuela) said that he would have preferred the Convention to have been adopted by consensus. His delegation had voted in favour of adoption because it believed that the best compromise solution within the limitations imposed by the negotiating process had been achieved. Despite those limitations, an important step had been taken in the direction of the codification and progressive development of international law.

40. Mr. MANONGI (United Republic of Tanzania) said that the Convention had been adopted not as a result of comprehensive negotiations, but because the Working Group had run out of time. The provisions of article 3, paragraph 2, and of articles 5, 7 and 32 did not represent a balance of interests between riparian States insofar as the equitable use of watercourse was concerned. Consequently, an instrument had been adopted which did not enjoy the confidence of a considerable number of States.

41. The CHAIRMAN introduced the draft report of the Working Group of the Whole to the General Assembly (A/C.6/51/NUW/WG/L.4 and Add.1).

Part I. Introduction

42. The CHAIRMAN said he took it that the Working Group wished to adopt Part I of the draft report.

43. It was so decided.

44. Mr. GONZALEZ (France) said that the articles had been adopted with a number of reservations, which meant that the drafting process was not over. For that reason, the report of the Working Group could not be submitted to the General Assembly; instead, the work that had been done should be reported to the Sixth Committee.

Part II: Consideration of proposals

Paragraphs 6 and 7

45. The CHAIRMAN said he took it that the Working Group wished to adopt paragraphs 6 and 7 of the draft report.

46. It was so decided.

Paragraph 8

47. Mr. SVIRIDOV (Russian Federation) proposed that, in the statement of understanding pertaining to article 1, the words "conservation and management" should be replaced by the word "utilization".

48. The CHAIRMAN said he took it that the Working Group wished to adopt paragraphs (a) and (b) of the statement of understanding pertaining to article 1, as orally amended by the representative of the Russian Federation.

49. It was so decided.

50. The CHAIRMAN said he took it that the Working Group wished to adopt the paragraph of the statement of understanding pertaining to article 2, subparagraph c.

51. It was so decided.

52. The CHAIRMAN took it that the Working Group wished to adopt paragraph (a) of the statement of understanding pertaining to article 3.

53. It was so decided.

54. The CHAIRMAN said that one delegation had proposed that the phrase "in this article or elsewhere" should be added after the word "used" in the first line of paragraph (b) pertaining to article 3. He took it that the Working Group wished to adopt the paragraph with the proposed amendment.

55. It was so decided.

56. The CHAIRMAN said he took it that the Working Group wished to adopt the paragraph pertaining to article 6, paragraph 1 (e).

57. It was so decided.

58. The CHAIRMAN read out a paragraph pertaining to article 7, paragraph 2, which was to be incorporated into the statement of understanding contained in document A/C.6/51/NUW/WG/L.4/Add.1 and which read: "In the event such steps as are required by article 7 (2) do not eliminate the harm, such steps as are required by article 7 (2) shall then be taken to mitigate the harm". He took it that the Working Group wished to adopt the paragraph.

59. It was so decided.

60. The CHAIRMAN said he took it that the Working Group wished to adopt the paragraphs pertaining to article 10, articles 21, 22 and 23, article 28 and article 29.

61. It was so decided.

62. The CHAIRMAN noted that throughout the consideration of the articles of the draft convention, reference had been made to the relevant comments which the International Law Commission had made to clarify its content.

Paragraphs 9 and 10

63. Mr. ISKIT (Turkey) said that, in order to place on record what had really happened during the meeting, it would be necessary to add a phrase in paragraph 9 after the word "adopted" to indicate that the Working Group had failed to reach consensus on the most important articles, nor had it adopted the draft as a whole by consensus.

64. The CHAIRMAN pointed out that the Working Group had adopted the draft convention as a whole after putting it to a vote. He suggested that, if delegations agreed, the results of that vote should be included in paragraph 9 of the draft report.

65. Mr. ISKIT (Turkey) said it would suffice to say that the draft convention had been put to a vote.

66. The CHAIRMAN said he took it that the Working Group wished to adopt paragraphs 9 and 10 of the report as amended by the representative of Turkey.

67. It was so decided.

68. The CHAIRMAN said he took it that the Working Group wished to adopt the draft report (A/C.6/51/NUW/WG/L.4 and Add.1) as a whole.

69. It was so decided.

70. The CHAIRMAN said that the Working Group had concluded its work on adopting the draft convention, which represented the culmination of nearly 25 years of work. He thanked delegations, the Chairman of the Drafting Committee, the Expert Consultant, the Secretary and the Secretariat for their assistance.

The meeting rose at 8.05 p.m.